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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/045,036	03/20/1998	JAY S. WALKER	97-558	9335
22927 7590 12/11/2007 WALKER DIGITAL MANAGEMENT, LLC 2 HIGH RIDGE PARK STAMFORD, CT 06905			EXAMINER CARLSON, JEFFREY D	
			ART UNIT 3622	PAPER NUMBER
			MAIL DATE 12/11/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/045,036

Applicant(s)

WALKER ET AL.

Examiner

Jeffrey D. Carlson

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 9/25/06 11/14/06
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

This action is responsive to the amendment filed 2/2/2006.

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-36 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 6887153, claims 1-11 of U.S. Patent No. 6582304, and claims 1-12 of U.S. Patent No. 6267670. Although the conflicting claims are not identical, they are not patentably distinct from each other because printing a purchased lottery ticket on a transaction receipt is taken to be obvious, because authentication means/codes are well known for lottery tickets, because a plurality of lottery numbers are an obvious way to hold a lottery, because it

would have been obvious to one of ordinary skill at the time of the invention to have acquired more tickets when the inventory of unallocated tickets/portions is low, as well as allocating a portion of a lottery ticket is taken to inherently include allocation of the portion to an *available, unallocated portion* of the lottery ticket.

3. Claims 1-36 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 11-22 of copending Application No. 10/457101. Although the conflicting claims are not identical, they are not patentably distinct from each other for the reasons above.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. **Claims 11, 12, 21-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Roberts (US5772510).**

6. Regarding claims 11, 12, 21-24, the examiner is in agreement with the Board Decision rendered 11/30/22005. Roberts teaches a lottery ticket point of sale device; see figure 7. The device has a mechanism to accept currency at items 48 and 50. Roberts teaches "[t]he payment indication circuit 50 provides an indication of the amount of money inserted into slot 48 by the purchaser. If the proper price has been paid, printer 19 prints the ticket completion information 20a, 20b..." See column 6, lines 60-65. We consider the payment indication circuit to perform the claimed "determining a monetary value" step. Further, we consider the output of the ticket to the user to be the claimed step of "allocating a portion of a ticket". As identified supra, we consider the scope of the claimed "portion" [or "fraction"] to include the whole value of the ticket. Thus delivering a ticket to the purchaser in response to receiving the proper fee meets the claimed "allocating a portion." Roberts' teaches that the paper ticket includes a ticket identifier (unique barcode 16 and 20) along with information identifying the value of the ticket full portion (see information 20b, which identifies \$1.00), which we consider to meet the claimed outputting a ticket identifier portion. Further, Roberts teaches that files at the lottery computer are updated with the ticket information, which we consider to meet the claimed storing step. See column 4, lines 59-60. Regarding the portion identifier and the associated prize, any of the codes used to authenticate the validity of the ticket is taken to represent a portion identifier that identifies the full portion of the ticket. Any of the other indicia can be taken to represent the broadly claimed "ticket identifier".

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**8. Claims 1, 3-6, 8-12, 21-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant admitted prior art in view of Roberts (US5772510).**

9. Regarding claims 1, 3, 4, 6, 8, 9, 11, 12, 21-24, applicant admits the well known lottery systems (such as in Germany) where players may purchase fractions (such as  $\frac{1}{2}$ ,  $\frac{1}{4}$  shares) of a full lottery ticket and whereby the winners of such tickets receives respective shares ( $\frac{1}{2}$ ,  $\frac{1}{4}$ ) of the prize [spec page 3]. Applicant does not speak of how the management of such fractional tickets are managed, yet given Roberts's electronic management of lottery distribution and prize redemption/authentication, it would have been obvious to one of ordinary skill at the time of the invention to have electronically managed such a lottery system that included fractional amounts by stored ticket identifiers as well as fraction identifiers so that users can confidently purchase fractions of tickets and win respective fractions of the winning ticket prizes. It would have been obvious to one of ordinary skill at the time of the invention to assign fractions of tickets from tickets having unassigned portions, so as to avoid for example three purchasers of  $\frac{1}{2}$  tickets from sharing a single ticket.

10. Regarding claims 5, 10, it would have been obvious to one of ordinary skill at the time of the invention to have managed the ticket inventory whereby fractions of tickets are associated with tickets having available fractions rather than assigning all fractions to new, fully unallocated tickets. This would avoid an excess of needless tickets all having only a small fraction allocated. This is similar to a pizza shop selling slices of pizzas whereby steps are taken to minimize the number of pizzas with only a few slices removed from them.

11. Regarding claim 25-36, it would have been obvious to one of ordinary skill at the time of the invention to have acquired more tickets when the supply of tickets or unallocated ticket portions is low. This is similar to a pizza shop who acquires more pizzas when they are running low either on portions of pizzas or whole pizzas.

**12. Claims 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts as above further in view of Herman** (Herman, Ken, "Auchan cashes in on Lottery", 7/1/1992, Houston Post, pg A15.)

13. Regarding claims 13, 16, 17, 20, Herman teaches offering lottery tickets for sale as part of the customer's change due. It would have been obvious to one of ordinary skill at the time of the invention to have offered lottery sales as part of customer's change due and consistent with the Board's reasoning repeated above, this would read on the claims.

14. Regarding claims 14, 15, 18, 19, Official Notice is taken that it is well known to round change due amounts up or down so as to avoid exchange pennies for example and it would have been obvious to one of ordinary skill at the time of the invention to have done so with that of Roberts and Herman. Further, a rounding operation performed in \$0.50 (either down or up) results in the same \$0.50 value.

#### ***Allowable Subject Matter***

15. Claims 2 and 7 are allowable over the cited art.

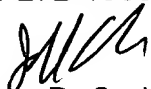
#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey D. Carlson whose telephone number is 571-272-6716. The examiner can normally be reached on Mon-Fri 8a-5:30p, (work from home on Thursdays).



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571)272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Jeffrey D. Carlson  
Primary Examiner  
Art Unit 3622

jdc